STATEMENT OF
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BEFORE THE HOUSE SUBCOMMITTEE ON MERCHANT MARINE
MERCHANT MARINE AND FISHERIES COMMITTEE
ON H.R. 2692
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Mr. Chairman and Members of the Subcommittee:

My name is Harold E. Shear, and I am the Maritime Administrator of the Department of Transportation. I am very pleased to appear before the Subcommittee to present the views of the Administration with respect to H.R. 2692, a bill "To revise the laws regarding the transportation of Government cargoes in United States-flag vessels."

Before I get into the details of the Administration's position on H.R. 2692, let me commend you, Mr. Chairman, and the Members of your Subcommittee. You and your colleagues have gone to great efforts in this proposed legislation to assist the U.S.-flag merchant marine. You have also taken the time this morning to be here to foster the bill. As the Maritime Administrator, I deeply appreciate it.

I would also like to make clear once again the President's commitment to the existing cargo preference laws. As you know, the two major policy announcements made by Secretary Lewis in May and August of 1982, which outlined the Administration's position on various aspects of maritime promotional policy, reaffirmed support for the cargo preference laws currently in effect. The Administration continues to strongly support these laws, and, where required, would support an appropriate clarification of existing law. However, we do not support either an expansion or a contraction of of current law, and for that reason the Administration opposes H.R. 2692, the Government-Impelled Cargo Act of 1983.

Let me go into more detail about H.R. 2692 and the basis for the Administration position opposing the legislation. H.R. 2692 would repeal three cargo preference laws that apply to the ocean transportation of Government-impelled cargoes, and replace these laws with proposed legislation to be known as the "Government-Impelled Cargo Act of 1983."

The three cargo preference laws that would be repealed by the subject legislation are the Cargo Preference Act of 1904 (10 U.S.C. 2631), Public Resolution 17 (46 U.S.C. 1241-1), and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)), also known as Public Law 664.

As you know, the Cargo Preference Act of 1904 generally requires that military cargoes be shipped on vessels of the United States or belonging to the United States. The 1904 Act does not mandate the use of privately-owned, United States-flag commercial vessels. However, the Cargo Preference Act of 1954 requires that 50 percent of such military cargoes be shipped on privately-owned, United States-flag commercial vessels.

The second statute, Public Resolution 17, provides that it is the "sense of Congress" that in any loans made by a Government agency to foster the export of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States. Statutory waivers are granted when United States-flag vessels are not available. General waivers are granted to permit vessels of recipient nations to carry up to 50 percent of the ocean cargoes, provided that the United States-flag carriers do not experience discrimination in trade with the recipient nation. At the present time, about 75 percent of Public Resolution 17 cargoes are transported by United States-flag merchant vessels.

The third cargo preference law that would be repealed by the subject legislation is the Cargo Preference Act of 1954, which requires that at least 50 percent of Government-generated cargoes be shipped on privately-owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates. The Cargo Preference Act of 1954 is commonly referred to as Public Law 664.

Public Law 664 applies to all government agencies when shipping on ocean vessels "equipment, materials, or commodities" that have been procured by the United States for its own account, furnished by the United States for the account of a foreign nation, or for which the United States advances funds or credits or guarantees the convertability of foreign currencies.

These cargo preference laws would be repealed and replaced by H.R. 2692, which would classify cargoes subject to the Act as waterborne cargo affecting the national security of the United States, and waterborne cargo not affecting the national security of the United States. Waterborne cargo not affecting the national security of the United States would be further classified in the bill as Government-impelled as the result of either direct Government involvement or indirect Government involvement.

Section 2 of the bill would require that 100 percent of all waterborne cargo affecting the national security of the United States be transported in United States-flag vessels. Our first concern with Section 2 is that it is not clear whether the term "United States-flag vessels" means privately-owned U.S.-flag merchant vessels or also includes government-owned vessels, as current law provides. Our second concern is that in most categories, this section represents an expansion of existing cargo preference requirements. For example, H.R. 2692 would require that all oil and other petroleum products procured for the Strategic Petroleum Reserve (SPR) be transported on U.S.-flag vessels, compared to the current requirement that 50 percent be transported in privately-owned U.S.-flag vessels. Such an expansion could increase the cost of transporting oil to the SPR and would impair the government's ability to purchase crude oil at advantageous prices on the spot market. Thus, while we believe that it is important to maintain the current 50 percent requirement for the significant contribution that it makes to the health of our merchant marine, we also believe that expansion of the requirement could well infringe on the flexibility needed by programs such as the Strategic Petroleum Reserve to fulfill effectively their statutory requirements.

Further, Section 2 would mandate that 100 percent, rather than the current 50 percent, of all materials contracted for the National Defense stockpile be transported in U.S.-flag vessels. It would expand the current requirement that 100 percent of supplies bought for the Army, Navy, Air Force or Marine Corps be transported by U.S. ships, by adding the Coast Guard to the list of covered agencies and by expanding the scope of such cargoes from "supplies" to "equipment and supplies." Finally, it would add a whole new category to the 100 percent requirement described as "any other equipment, materials, or commodities, of any description, certified by the President as affecting the national security of the United States." The Administration cannot support any of these expansions.

Sections 3 and 4 of H.R. 2692, dealing with waterborne cargoes not affecting the national security of the United States, would require that not less than 50 percent of the gross tonnage of certain of these Government-impelled cargoes be transported in United States-flag vessels. Such cargoes are classified in the bill as being Government-impelled as the result of direct or indirect Government involvement.

In the case of <u>direct</u> Government involvement resulting in the ocean transportation of non-national security cargoes, section 3 of H.R. 2692 provides that the 50 percent requirement applies when:

a. The United States procures, contracts for, or otherwise obtains the cargo for its own account;

b. The United States furnishes the cargo to or for the account of any foreign nation free of any charge for the cargo; or

c. The United States sells the cargo to or for the account of any foreign nation at a price that is less than the cost to the United States of procuring, handling, and storing the cargo.

Public Law 664 currently provides that the 50 percent cargo preference requirement will apply "Whenever the United States shall procure, contract for or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States . . .".

In the case of _indirect_ Government involvement resulting in the ocean transportation of non-national security cargoes, section 4 of H.R. 2692 provides that the 50 percent requirement applies to waterborne cargo shipped to or from the United States, whenever the United States provides to any entity, foreign or domestic, any form of grant, loan, credit, advance of funds, cash transfer, or guaranty, and such financial assistance is used to pay (a) at least 50 percent of the cost of procuring, contracting for, or otherwise obtaining the cargo, or (b) any of the freight charges for the cargo. In addition, section 4 of the bill provides that "Any grant, loan, credit, advance of funds, cash transfer, or guarantee provided in accordance with this section shall be conditioned on the responsible agency obtaining agreement by the recipient entity to comply with the requirements of this Act."

In this regard, Public Law 664 currently requires that the 50 percent cargo preference requirement shall apply "Whenever the United States . . . shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities,".

The Administration opposes section 4 of the bill because it would substantially change the scope of existing cargo preference requirements. While the method of calculating the 50% limit in subparagraph (a)(1) is far from clear, it appears that this section could expand the practical application of cargo preference requirements beyond their current application. As I just mentioned in connection with section 1 and 2, the Administration does not support expansion of existing cargo preference laws.

Further, section 4 would eliminate the 100 percent United States-flag shipping requirement imposed by Public Resolution 17 on cargoes generated by the Export-Import Bank and the agreed 100 percent United States-flag shipping requirement on foreign military sales administered by the Defense Security Assistance Agency. Of the Export-Import Bank generated cargo, it is estimated that in 1983 approximately $60 million of the projected $85 million entitlement would be lost under the bill. With respect to the foreign military sales program, a reduction to a 50 percent U.S. flag shipping requirement would result in a loss of $21 million in ocean freight revenue based on a $42 million projection. Specifically, the provisions set forth in paragraphs (1) and (2) of section 4 would effectively eliminate cargo preference requirements for these programs as well as for the cargo generated by direct credit programs and by the Chrysler Loan Guarantee Act. This is because the United States generally pays less than 50 percent of the cost of many cargoes purchased with Federal assistance, and Federal funds may or may not be used to pay the freight charges or other transportation costs associated with the cargoes.

If I may comment further on section 4 of the bill, we have additional difficulty because it does not provide for a general waiver system, with a stipulation that general waivers will not be granted where the Secretary of Transportation determines that a recipient country is discriminating against U.S.-flag ships. As this Subcommittee knows, the general waiver system applied under the 100 percent United States-flag shipping requirement of Public Resolution 17 on Export-Import Bank loans, and on the 100 percent agreed United States-flag shipping requirement for the Foreign Military Sales credit programs, has been an important source of leverage available to the United States for dealing with discrimination against U.S.-flag ships. To dismiss it, particularly at this stage with a strong trend to cargo reservation devices by many countries, would be to lose a highly effective tool.

Lastly, on section 4, I must note that although section 4(a) has included the terms "cash transfer", "grant" and "guarantee" within the purview of the bill, any benefit gained from their inclusion is quickly lost in section 4(a)(1) by the requirements that such financing be directly used to pay at least 50 percent of the cost of procuring, contracting for or otherwise obtaining <u>the cargo</u>. Since funds advanced by these programs are commingled with other funds of their recipients, tracking a procurement to such funds is nearly impossible under Public Law 664 and could only be made worse by legislating such a requirement. For example, the $50 million in ocean freight revenue we have achieved through a side agreement with Israel under its cash transfer program would be jeopardized since we could not track the funds under the program.

Mr. Chairman, I am very uncomfortable with section 5 of the bill. As you know, this section deals with the geographical allocation of cargoes. It does not serve to strengthen cargo preference; instead it places on the Maritime Administration the burden of ensuring that at least 10 percent of all waterborne cargo subject to the Act be routed to each of the four coasts. Since the Maritime Administration does not control cargo, and in fact a large percentage of preference cargo is not directly controlled by any Government agency, it is not feasible for the Maritime Administration to direct cargo movements. Requiring Federal agencies to redirect cargoes from their normal routing would go substantially beyond those steps considered necessary and practicable in complying with cargo preference. Such action could also result in an agency paying a higher ocean freight differential than would otherwise be paid. It could require rerouting and unnecessary double handling of some cargoes, increasing the likelihood of damage. The allocation of the minimum 10 percent shares from many individual transactions, such as Export-Import Bank loans, would be extremely complicated and consitute a severe burden on the commercial firms utilizing such loans.

Mr. Chairman, as you know, two years ago a similar proposal was introduced, primarily because of the concerns of the Great Lakes maritime interests regarding the erosion of its coastal market share. At that time, I pledged the Maritime Administration's assistance in helping the Great Lakes overcome institutional barriers restricting the flow of Government-impelled cargoes through their ports. I am pleased to be able to inform the Subcommittee that some progress has been made. Additional export liner cargoes generated through programs managed by the Department of Defense, Agriculture Department, A.I.D., and import liner cargoes developed by this Department's Urban Mass Transportation Administration are moving via Great Lakes ports.

Mr. Chairman, after careful study, we have concluded that although the three existing cargo preference laws are not without problems, they are too important for our merchant marine to attempt a major restructuring that would alter their content.

As this Subcommittee is aware, reserved cargoes generated by our cargo preference laws play an important role with respect to the health and well-being of the United States-flag merchant marine.

For example, the Cargo Preference Act of 1904 generates vast amounts of cargoes that United States-flag operators vigorously compete for. In fiscal year 1981, the Department of Defense generated 7.3 million measurement tons of dry cargo and 12 million long tons of petroleum cargo. Of this amount, United States-flag merchant vessels transported 6.8 million measurement tons of dry cargo, and 8.2 million long tons of petroleum cargoes. We would expect 1983 to approximate, if not exceed, these figures.

At the present time, cargoes subject to Public Resolution 17 are primarily generated by the Export-Import Bank. In 1980, such transactions involved total freight revenue of $87 million, of which $65 million was paid to privately-owned United States-flag merchant vessels. It is our projection that total freight revenue in 1983 will be in excess of $106 million, with United States-flag vessels receiving at least $85 million in freight revenues.

Finally, in 1980, the cargo preference requirements of Public Law 664 generated 9.3 million metric tons of cargo, of which 3.3 million metric tons was transported in privately-owned, United States-flag merchant vessels. In 1983, we would expect United States-flag vessels to receive in excess of 12 million metric tons of the total 20 million metric tons that should be generated.

It is clear from these figures that reserved cargoes are an important source of revenue for United States-flag carriers. I also might note that the vigorous efforts of my agency to enforce our existing cargo preference laws would appear to be reflected in the above figures. We do support, however, a meaningful age restriction for United States-flag vessels that engage in the ocean transportation of reserved cargoes generated by our cargo preference laws. We have such a proposal under consideration within the Department. Reserve cargoes are good for the United States-flag merchant marine. In return, such cargoes should have the benefit of ocean transportation by modern, economical, efficient United States-flag merchant vessels.

Mr. Chairman, the Administration continues to strongly support our existing cargo preference laws. We do not deem it prudent to amend these laws which are so important to the U.S. merchant marine. Therefore, we are opposed to H.R. 2692, the Government-Impelled Cargo Act of 1983.

Mr. Chairman, that concludes my prepared statement, and I will be pleased to answer any questions that you or the Members of the Subcommittee may have. Thank you.